

Office Communication

The amendment filed on 7/16/09 presenting for examination only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are drawn to a method of treating a disease in a patient, while the originally elected claims were drawn to an *in vitro* method of culturing and transdifferentiating cells. The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is made and action given on the elected subject matter, in this case the *in vitro* method described in claim 24 of the 11/6/08 claim listing. See MPEP § 819.

The original restriction requirement in this case gave applicants ample opportunity to elect a method of treating disease; original Group I (claim 1 and dependents) is drawn to a method of enhancing function of an organ in a subject comprising implanting cells in a subject. Had the instantly submitted claims been included in the original claim listing, they would have been placed into a group separate from elected Group II because under 37 C.F.R. 1.475, multiple processes of use are considered separate inventions for a finding of lack of unity in applications filed under 35 U.S.C. § 371. An attempt to shift from an *in vitro* transdifferentiation method to an *in vivo* treatment method, especially when applicant has already declined examination on the *in vivo* method, is improper.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the

omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lora E. Barnhart whose telephone number is 571-272-1928. The examiner can normally be reached on Monday-Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lora E Barnhart/
Primary Examiner, Art Unit 1651